direction or non-direction by the judge to the jury on this question.

It was next contended for the appellant that the learned judge failed to direct the jury that lack of motive was an important indication of insanity. The case of *Yeo Ah Seng* v. *Public Prosecutor*[4] was cited to us in support of this contention. We could not accept this contention because in the course of his summing-up the learned judge did say to the jury that although the prosecution need not have to prove motive it was a factor which they had to take into account in considering the defence.

It was further contended that the judge should have directed the jury on the relevant facts which they should take into consideration in coming to their decision on the question of insanity. In particular it was said that the learned judge failed to emphasise to the jury that there was no secrecy about the commission of the offence in a lighted area, that after committing the offence the appellant stood under the lamp-post, that he chased the man who tried to intervene and that he offered no resistance when he was arrested. Taking the summing-up as a whole, we were satisfied that all this was clearly put to the jury. We could therefore find no substance in this contention either.

One of the grounds of appeal was that the learned trial judge failed to explain properly to the jury the medical terminology "paranoia schizophrenia". We could find no merit in this ground because the evidence of Dr. Mahadevan was dealt with at great length by the learned judge in his summing-up. The doctor had stated in his evidence the nature of the disease of the mind which the appellant was suffering from and its effect on him. He also expressed the view that a person suffering from such a disease may or may not know the nature of his acts. All this was clearly put to the jury by the learned judge.

The substantial ground of appeal was that the learned judge failed to direct the jury that the uncontradicted medical evidence of Dr. Mahadevan was not challenged in any way by the prosecution on the question of insanity. Here again our attention was drawn to what this court said in *Yeoh Ah Seng's* case, but we could find nothing in the learned judge's summing-up to indicate that he had deprecated the evidence of the medical expert and directed the jury that his views were based on assumptions.

As we have already said, the learned judge in fact dealt at great length in his summing-up with the evidence of Dr. Mahadevan, at the end of which he directed the jury that the doctor was only expressing an opinion which they were not bound to follow as the whole question of whether the accused was sane or insane at the time of the commission of the offence was a question which they alone must decide. In our judgment there was nothing wrong with that part of the learned judge's summing-up.

In this connection we were guided by the decision of the Court of Criminal Appeal in England in the case of *James Frank Rivett*.[5] It was held in that case that the issue is one to be determined by a jury, and not by medical men of whatever eminence; and where a jury has found a prisoner guilty despite strong evidence by medical men of the highest standing that he was insane at the material time, the Court of Criminal Appeal will not interfere with the verdict, unless it is satisfied that no reasonable jury could have found a verdict of guilty in the particular case. The Lord Chief Justice at the conclusion of his judgment of the court said at page 95:

"Let it be assumed he suffered from schizophrenia, or whatever doctors may call it; let it be assumed that he killed the girl on a sudden impulse; a jury of his country are satisfied that he was responsible, and it is not for this court to say that he was not."

That was exactly the position in the present case.

Taking the learned judge's summing-up as a whole, we were satisfied that he had directed the jury adequately and properly on the question of insanity. We therefore dismissed the appeal.

Appeal dismissed.

Solicitors: *Mahalingam & Poobalan.*

LETCHUMANAN v. ENG MEE YONG & ORS.

[F.C. (Gill Ag. L.P., Ong Hock Sim and Raja Azlan Shah F.JJ.) September 21, 1976]

[Kuala Lumpur — Federal Civil Court Appeal No. 158 of 1975]

Land Law — Caveat — Contract for sale of land — Termination of contract for alleged non-payment of balance of purchase price — Whether purchaser has caveatable interest — National Land Code, s. 323(1).

The respondents had entered into a contract for the sale of land to the appellant. The appellant paid the deposit and had lodged a caveat against the land. Subsequently the respondents purported to terminate the contract on the ground that the appellant had not paid the balance of the purchase price. The respondents thereupon applied to remove the caveat and this application was allowed in the High Court as the learned judge held that the appellant did not have any caveatable interest in the said land as the contract had been repudiated. The appellant appealed.

Held, allowing the appeal: (1) whether or not the agreement had been lawfully terminated could only be decided in the action which the appellant could and had in fact brought in relation to the agreement of sale and therefore it was not correct to say that the appellant had no caveatable interest in the land;

(2) repudiation by one party to the agreement cannot preclude the other party from suing on the contract.

Case referred to:-

(1) *Registrar of Titles, Johore* v. *Temenggong Securities Ltd. & Anor.* [1976] 2 M.L.J. 44.

FEDERAL COURT.

N. Ramachandran for the appellant.

Wong Soon Fok for the respondent.

Gill Ag. L.P.: This was an appeal from the judgment of Ajaib Singh J. granting an order, on the application by way of originating motion of the respondents to this appeal, for the removal of the caveat entered by the appellant against their land held under Grant No. 2457 for Lot 593 in the Mukim of Ampangan in the District of Seremban. The caveat was lodged on the basis that by an agreement in writing dated June 28, 1974 the respondents had agreed to sell the said land to the appellant.

The appellant paid a sum of $97,765.62 by way of deposit and in part payment of the purchase price on signing the agreement. He was to pay a further sum of $30,000 on or before July 29, 1974 and to complete the purchase by paying the balance of the purchase price amounting to $699,890.63 on or before September 28, 1974. Time was stated in the agreement to be of the essence of the contract.

The appellant paid the sum of $30,000 as agreed but he failed to pay the balance of the purchase price on or before the due date, whereupon the respondents purported to forfeit the total sum paid by the appellant as liquidated damages for breach of contract as provided in clause 5 of the agreement and notified the appellant accordingly by their solicitors' letter of September 30, 1974.

In their affidavit in support of the motion for the removal of the caveat, the respondents stated, *inter alia*, that they had never agreed to any extension of time beyond the date stipulated for the completion of the purchase. In opposing the application, the appellant filed a lengthy affidavit in which he stated that there was an earlier agreement of sale in relation to the same land which had not been specifically cancelled or withdrawn by the agreement of June 28, 1974, that this latter agreement did not contain all the terms as agreed orally including the term that time shall not be of the essence of the contract, that the respondents had agreed to an extension of time for a period of two months from September 28, 1974, and that he had enhanced the value of the land by building an access road with the knowledge and consent of the respondents so that they were estopped from denying his interest in the land.

After giving due consideration to the affidavits and the submissions made on behalf of the parties the learned judge came to the conclusion that the appellant had no caveatable interest in the said land within the meaning of section 323(1) of the National Land Code. He accordingly made the order appealed from. In reaching that conclusion the learned judge made certain findings of fact on the affidavits before him, namely, that by their second agreement of June 28, 1974 the parties had mutually agreed to terminate the earlier agreement of December 16, 1973 and that the respondents had not agreed to any extension of time for the completion of the purchase and the appellant had made no attempt whatsoever to complete the purchase at any time.

It would seem clear from the learned judge's grounds of judgment that he made the order for the removal of the caveat because he took the view that the appellant ceased to have any caveatable interest in the land after the respondents had repudiated the contract on the ground that the appellant had failed to complete the purchase on or before the agreed date. With respect to the learned judge, repudiation by one party to the agreement cannot preclude the other party from suing on the contract.

As has been stated again and again, the whole system of caveat is founded on the principle that they exist for the protection of alleged as well as proved interests. In the recent case of *Registrar of Titles, Johore* v. *Temenggong Securities Ltd. & Anor.*,[1] Lord Diplock in delivering the judgment of the Privy Council stated that —

"The purpose of a private caveat is to preserve the *status quo* pending the taking of timeous steps by the applicant to enforce his claim to an interest in the land by proceedings in the courts."

Thus, the lodging of a caveat is really in the nature of the initiation of litigation. It need hardly be said that the rights of the parties under a contract can only be determined in a proper action and not merely on affidavits. In other words, whether or not there has been a breach of contract on the part of any of the parties is a question which can only be decided in a proper action.

The only ground in support of the appeal before us was that the appellant had a caveatable interest in the land even though the respondents had purported to forfeit the deposit to put an end to the contract and notwithstanding that time was of the essence of the contract. The argument which was put forward on behalf of the respondents was that the appellant had no caveatable interest because the agreement had been lawfully terminated. In our judgment, whether or not the agreement has been lawfully terminated can only be decided in the action which the appellant, we were given to understand, had in fact brought in relation to the agreement of sale.

For the reasons which we have stated we allowed the appeal and set aside the order of the learned judge that the caveat be removed.

Appeal allowed.

Solicitors: *N. Ramachandran & Co.; Chooi & Co.*

NIHAL SINGH v. BHAG SINGH

[A.C.J. (Hashim Yeop A. Sani J.) January 2, 1976]

[Seremban — Civil Appeal No. 11 of 1974]

Practice and Procedure — Appeal — Findings of fact by trial Magistrate — Onus on appellant to displace conclusion formed by trial Magistrate — Limitation.

This was an appeal against the decision of the learned magistrate, Kuala Pilah in a claim for money lent as a friendly loan with a promise to repay, where the learned magistrate gave judgment in favour of the plaintiff in the sum of $900 and costs. The defendant appealed and the grounds of appeal were —

(a) that the learned magistrate failed to give due weight to the evidence of the defendent and relied heavily on the demeanour of witnesses of the plaintiff. The learned Magistrate also wrongly admitted a document which should not have been admitted. All these prejudiced the mind of the learned Magistrate, and resulted in erroneous findings of fact.

(b) The learned magistrate had failed to consider the pleading as to limitation and make a finding on the question of limitation.

Held, dismissing the appeal: (1) the learned magistrate in this case had made definite findings of fact and the onus on the appellant to displace the conclusion formed by the learned magistrate was a heavy one and in this case he had failed to discharge it;

(2) because of the findings of the learned magistrate that a loan was given with a promise to repay and that payments towards the loan were made on three separate occasions, the